IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

L.Rs. of Kishori Lal & anr. vs. Jeewan Lal

S.B. Civil Second Appeal No.111/1981 under Section 100, C.P.C. against the judgment and decree dated 2.2.1981 passed by the learned Addl. District Judge No.1, Jodhpur in Civil Appeal Decree No.10/1978.

Date of Judgment: November 09,2005.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Rajendra Mehta for the appellant.
Mr. M.L. Chhangani along with Mr. Ashok Chhangani for the respondent.

BY THE COURT:

This appeal is against the judgment and decree of the first appellate court dated 2.2.1981 by which the first appellate court reversed the judgment and decree of the trial court dated 30.4.1977 which was passed in favour of the plaintiffs-appellants.

Brief facts of the case are that the plaintiffs Kishori Lal and Babu Lal filed the suit for possession of the house in dispute which is described in para no.1 of the plaint. According to the plaintiffs, the said house was let out to Govind Lal on 3.2.1935. The consideration for letting out the house was that the defendant will keep the house

maintained. A rent deed was also executed on 3.2.1935. The house was let out because the plaintiffs were living far aware from Jaisalmer in different State at Kasganj. According to the plaintiffs, despite the fact that Govind Lal was in possession of the house as tenant, still whenever the plaintiffs came to Jaisalmer they used to stay in the house in dispute. The plaintiffs also used to repair the house when they came to Jaisalmer time to time. The said Govind Lal inducted his brother-in-law Kishan Lal and his two sons Nand Lal and Jeewan Lal in the house. The plaintiffs when came to know about this fact when they came to Jailsalmer, they protested but Govind Lal told that Kishan Lal is since in their near relation, therefore, as soon as Kishan Lal will settle, he will ask him to go from this house. In the year 1957, for the purpose of marriage of plaintiff Babu Lal' son Laxmi Kant at Jaisalmer, they came to Jailsalmer and told Govind Lal to vacate the entire house and give possession to the plaintiffs. The marriage of plaintiff's son Laxmi Kant was solemnized on 4.2.1957 and the plaintiffs along with their relation stayed in the house at that time. After the marriage, the plaintiffs again handed over possession of the house to Govind Lal. After some time, Govind Lal and Kishan Lal both died and Nand Lal left the house because of some family dispute, however, Nand Lal's wife Smt.Ram Pyari remained in the house. It is alleged that in the year 1968, the plaintiff's son Laxmi Kant's wife Chand Kanwar came to Jailsalmer and stayed in

some portion of the house. At that time, said Ram Pyari handed over the possession of the portion in which she was residing and she executed a deed of handing over of the part of the house in favour of the plaintiffs. Chand Kanwar puts locks over the portion which was handed over by Ram Pyari to plaintiff's son's wife Chand Kanwar. After 1968, in the month of April,1970 plaintiff Babu Lal's son Laxmi Kant again came to Jailsalmer but when he tried to live in the house, the defendants objected and they misbehaved with said Laxmi Kant and his wife and children. The defendants did not allow Laxmi Kant and his family members to enter in the house. Said Laxmi Kant tried to settle the dispute through various persons but the defendants declared that they are the owner of the house. In the background of these circumstances, the plaintiffs filed the suit for recovery of possession of the house and for mesne profits.

The defendants submitted written statement and denied the facts alleged by the plaintiffs and stated that the defendants are residing in the house in dispute since last more than 50 years and the house was never let out to Govind Lal. The deed dated 3.2.1935 is fabricated one. The defendants also submitted that the house is in possession of the defendants from the time of their ancestors even at the time when their business was in the State of Sindh, which is presently in Pakistan. It is

also stated that the marriages of the defendants were also solemnized in this very house. The defendants submitted that they never handed over possession of the house even for one or two days to the plaintiffs. The defendants also pleaded that they are also owner by adverse possession. The rejoinder was filed by the plaintiffs and the issues were framed by the trial court. The trial court held that the suit property was let out to Govind Lal and he inducted Kishan lal and his son. The trial court also held that Ram Pyari handed over possession of the part of the house in dispute to the plaintiffs and ultimately the trial court decreed the suit of the plaintiffs for possession of the house along with mesne profits by the judgment and decree dated 30.4.1977. The defendants preferred appeal which was allowed by the first appellate court by the judgment and decree dated 2.2.1981.The first appellate court discarded documentary evidence Exs.1,2 and 6 which are the deed executed by Ram Pyari, the rent deed alleged to have been executed by Govind Lal and the accounts books of the Panch. The first appellate court gave several reasons for not relying upon these documents and also found no credibility in the evidence of the plaintiffs and their witnesses.

The appellants being aggrieved against the judgment and decree of the first appellate court dated 2.2.1981, preferred this appeal.

Following substantial questions of law were framed by this Court while admitting this appeal on 2.9.1982:-

> "(1) Whether the first appellate court was justified in not relying upon documents Exs. 1, 2 and 6 produced by the plaintiffs- appellants ?
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> (2) Whether the first appellate court was justified in holding that the question of adverse possession was unnecessary and did not require consideration ?
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> (3) Whether the first appellate court erred in holding that the defendant was not in permissive possession of the disputed property on behalf of the plaintiffs-appellants.

According to the learned counsel for the appellants, the first appellate court committed serious error of law in discarding the documentary evidence Exs.1, 2 and 6. It is submitted that these documents clearly prove that Govind Lal was the tenant in the house in dispute and he repaired the house and he took money from one of the plaintiffs. Ram Pyari is family member of the defendants and she executed the deed at the time of handing over part of the property to the plaintiffs. Not only this, by oral evidence the plaintiffs proved that the house in question was vacated by Govind Lal in the year 1957 for the purpose of marriage of plaintiff Babu Lal's son Laxmi Kant. This fact is admitted by one of the witness of the defendants. It is also submitted that the defendants did not produce material witnesses who could have

contradicted the documentary evidence Exs.1,2 and 6. Apart from it, according to the learned counsel for the appellants, the plaintiffs are owner of the property and they will be deprived of this property if the judgment and decree of the first appellate court will be allowed to stand.

The learned counsel for the respondent submitted that in fact no substantial question of law arises in this appeal. The first appellate court considered the documents Exs.1,2 and 6 carefully and recorded the finding on the basis of the evidence and gave cogent reasons for discarding these documents. It is also submitted that the plaintiffs failed to prove their title and they failed to prove that Govind Lal was the tenant. They also failed to prove that defendants were inducted by Govind Lal and thereafter plaintiffs failed to prove that the defendants were permitted by the plaintiffs to occupy the house at any point of time. According to the learned counsel for the respondent, it is not a case of misreading of the document or accepting or rejecting the document on the basis of perverse reasons, therefore, once the evidence has been accepted by the first appellate court, after thoughtful consideration, then even if there is possibility of other view, even then Section 100,C.P.C. will not permit interference in the finding of fact on this ground. According to the learned counsel for the

respondent, even if the entire evidence is re-appreciated even then the case set up by the plaintiffs appears to be a concocted one to grab the property.

I considered the submissions of the learned counsel for the parties and perused the record.

The foremost question was whether the suit property was let out to Govind Lal and Govind Lal inducted his brother-in-law Kishan Lal along with Kishan Lal's son. The plaintiff in his plaint very specifically pleaded that the house in dispute was let out to Govind Lal on 3.2.1935 and on that very day, the rent deed was executed by Govind Lal. The rent deed is Ex.2. Ex.2,the alleged rent deed dated 3.2.1935, contradicts the case of the plaintiffs. As per the plaint allegation, the property was let out to Govind Lal on 3.2.1935 whereas the facts mentioned in the alleged rent deed itself show that by this deed, it has been shown that the said Govind Lal only admitted that he is living in the house in dispute as tenant on rent of keeping the house repaired and maintained. This is not a deed which shows that the property was let out on 3.2.1935. Not only this but in this deed, it is clearly mentioned that the house in dispute was maintained by neighbours and said Govind Lal also incurred expenditure of Rs.35/- for repair of the house.

Obviously, this expenditure is of prior to the date 3.2.1935. In this deed, it is mentioned that said Govind Lal received Rs.35/- from the plaintiffs but at the same time, it is mentioned that the liability to pay this amount was on the family members of the plaintiffs from whom said Govind Lal will recover the amount and will send this amount to the plaintiffs by money order. Therefore, the deed dated 3.2.1935 though has been described as the rent deed but it contains no facts about letting out of the house in dispute. Nothing has been said by the plaintiffs how Govind Lal was in possession of the house, if the facts mentioned in the deed dated 3.2.1935 are correct. If the other family members of the plaintiffs were responsible to maintain the house, then what was the right of the plaintiffs in the house is also not explained. These facts make the document dated 3.2.1935 suspicious.

The plaintiffs produced a deed alleged to have been executed by Mst. Ram Pyari. This document was also discarded by the first appellate court. It will be worthwhile to recapitulate the facts which have been mentioned by the plaintiffs himself in the plaint that Ram Pyari is wife of Nand Lal and Nand Lal was the person who left the house because of family dispute, therefore, the document alleged to have been executed by Ram Pyari who had no good relation with her husband's family members, is required to be considered cautiously. The first appellate

court gave several reasons and circumstances while considering the document dated 28.12.1968 executed by Smt.Ram Pyari in favour of the plaintiffs. In the year 1968 in Jailsalmer this document was executed, is also a relevant fact. By this document itself said Smt. Ram Pyari admitted that the house was let out to Govind Lal. In this documents facts have been mentioned in detail which only are relevant for proving the right, title and interest of the plaintiffs. What were the reasons for making these admissions by Ram Pyari in the deed dated 28.12.1969 have not been explained in any manner. Not only this, instead of getting receipt from the landlord that the landlord has received the portion of the house from Smt. Ram Pyari, Ram Pyari after admitting the right, title and interest of the plaintiffs, stated that she has handed over possession of the part of the house. This document also was rightly discarded by the first appellate court and there are more reasons for discarding both the documents than the reasons given by the first appellant court in the opinion of this Court. Ex.6 is the *'Bahi'* of the Panchayat. The plaintiffs failed to establish what was the reason for making these entries in the books of the Panchayat. The first appellate court considered all the circumstances and thereafter held that Ex.6 also cannot be relied upon. Therefore, the finding of the first appellate court is a finding of fact and is binding.

In view of the above, the substantial question of law no.1 is decided that the first appellate court was right in discarding the documents Ex.1,2 and 6.

Since the plaintiffs failed to prove that the defendants were inducted in the house by the plaintiffs themselves or the defendants were residing in the house under the permission of the plaintiffs, therefore, the question of claim of adverse possession of the defendants was not at all relevant. The question of adverse possession could have been there where the plaintiffs could have proved his right to recover the possession of the property on the basis of the title which could have been defeated by the defendants by setting up title by adverse possession. In this case there was no reason for deciding issue of adverse possession of the defendants when the plaintiffs failed to prove their right to recover possession of the property. Answer to substantial question no.3 is also clear from the reasons given above and in fact the substantial question no.3 is also a pure question of fact and the first appellate court has not committed any error of fact or law in holding that the defendants were not in permissive possession.

In view of the above, the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

Mlt.